

6 Official Opinions of the Compliance Board 74 (2009)

COMPLIANCE BOARD – COMPLAINT THAT SPECIFIES SUFFICIENT DETAIL SO THAT PUBLIC BODY MAY IDENTIFY MEETING AND ALLEGATIONS SATISFIES ACT

January 13, 2009

Joseph H. Potter

The Open Meetings Compliance Board has considered your complaint alleging that the Ocean City Council violated the Act in connection with the purported settlement of threatened litigation. Given the City Solicitor's representations, we find that no violation occurred.

I

Complaint and Response

The complaint alleged that the Ocean City Council violated the Open Meetings Act in connection with the Town's settlement of a potential sex discrimination lawsuit. Relying on a newspaper editorial, the complaint noted that the Chief of Police of the Ocean City Police Department decided not to follow through on her intent to file a lawsuit against the municipality. S. Green, *Between the Lines: Thoughts from the Publisher's Desk*, The Dispatch (October 3, 2008). According to newspaper editorial, in exchange to her decision not to file suit, Ocean City reportedly paid approximately \$5,000 to the attorney that had represented the Chief, covering costs incurred in anticipation of filing suit. The newspaper learned of the situation through an anonymous e-mail, but apparently conducted its own investigation and determined that the story had "at least ... some merit."

While the timing of the settlement is unclear, the editorial suggested that it had occurred within the last year. The complainant indicated that he had reviewed the minutes of the Council's open meetings and was unable to find any specific mention of the \$5,000 settlement. As a result, it is alleged that the Council violated the Open Meetings Act.

In a timely response on behalf of the Council, Guy R. Ayres, III, Ocean City's municipal attorney, argued that the complaint failed to satisfy the requirements of the Act, in that a complaint must not only identify the public body, but must "specify the action of the public body, the date of the action, and the circumstances

of the action.” §10-502.5(b)(2).¹ In the respondent’s view, “[i]t is illogical to even think that the legislature intended the [Compliance] Board to investigate and opine in response to newspaper editorials.”

Nevertheless, the Council’s response provided information concerning Ocean City’s Risk Retention Program. According to the response, the Mayor and Council annually determine a level of risk Ocean City will underwrite and the level of insurance to be purchased to cover risks in excess of those underwritten. This is accomplished through appropriations as part of Ocean City’s budgetary process. The response suggested that, to the extent there was discussion or settlement by the Council as alleged in the editorial, it would involve an administrative function outside the scope of the Act. §10-503(a)(1)(i). And the response indicated that pursuant to the Risk Retention program, Ocean City’s risk manager and the city solicitor or special counsel have authority to settle claims up to a certain amount, well in excess of \$5,000, and to settle claims without the approval of the Mayor and Council. Finally, the response noted that, “there was no such settlement within the past year as suspected and suggested or a settlement amount as stated in the editorial.”

II

Analysis

As a preliminary matter, we note that, while the complaint requested that we undertake an investigation, the Compliance Board is not an investigatory body. 5 *OMCB Opinions* 146, 148 n. 4 (2007). In considering this matter, we relied on the information provided in the complaint, along with the accompanying newspaper editorial, and the information provided by the City Solicitor on behalf of the Council in response.² As to the response, we reject the suggestion that the information in the complaint failed to satisfy the requirements of the Act. While the information provided in the complaint failed to identify a specific date on which the Council meeting allegedly occurred, it did provide the Council adequate information to respond. Of course, we encourage a complainant to provide as much detail as

¹ All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

² The complaint also requested that we issue a press release in the event we find a violation. While opinions of the Compliance Board are published and are also available on-line at www.oag.state.md.us/opengov/openmeetings/board.htm, we do not issue press releases addressing the results of our opinions. Following our receipt of the response filed on behalf of the Council, you submitted a newspaper article from the October 10, 2008, issue of the *Ocean City Today*. However, because that article did not address any meeting of the Council at which a settlement was approved, we did not forward the article to the Council for a response before issuance of this opinion.

possible in explaining why the complainant felt the Act was violated. *See* Open Meetings Compliance Board Complaint Procedures, <http://www.oag.state.md.us/Opengov/Openmeetings/complaint.htm>. But it is normally the public body rather than the complainant that has the necessary details to allow us to evaluate whether or not a violation of the Open Meetings Act occurred. *See* 6 OMCB Opinions 69, 72 (2008). In any event, the complaint and accompanying editorial provided sufficient information to satisfy the requirements of the Act.

Turning to the substance of the complaint, the Open Meetings Act applies when a “public body” conducts a meeting, that is, when a quorum of the body convenes “for the consideration or transaction of public business,” and the substance of the meeting is subject to the Act. §10-502(g) and (h) and §10-503. There is no question the Ocean City Council is a public body. However, according to the representations of the City Solicitor, “there was no such settlement within the past year....” Thus, the factual premise of the complaint, *i.e.*, that a settlement came before the Council during the period under consideration, is not accurate. The violation of the Open Meetings Act alleged in the complaint could not have occurred because there was no such settlement with the Police Chief. Accordingly, we do not address the merits of the Council’s contention that a settlement approval would be an administrative function outside the scope of the Act.³

III

Conclusion

Given the representations of the City Solicitor, there apparently was no Council meeting during the period under consideration at which a settlement between the Police Chief and municipality over a potential sex discrimination claim was approved as alleged in the complaint. Under the circumstances, no violation occurred.

OPEN MEETINGS COMPLIANCE BOARD

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³ To the extent a settlement involves a contractual agreement between the municipality and potential plaintiff, by definition, it could not qualify as an administrative function since it would constitute a “quasi-legislative function” in the parlance of the Act. §10-502(b) and (j)(3). However, we need not analyze this question here.